

Appendix VII

Guidance Memorandum on Solicitations

MEMORANDUM

TO: Deputy GC
FROM: GC/LP, GC/G
SUBJECT: USAID solicitation campaigns for Agency Programs or the Foreign Assistance Programs of Other Entities

ISSUE: Whether it is permissible for USAID officials to engage in solicitation campaigns seeking contributions to USAID or other organizations for development projects or activities from individuals, foundations and U.S. based corporations.

CONCLUSION: Such solicitation campaigns are permissible, but only if a number of conditions are met. In the absence of a specific USAID procedure for solicitation campaigns, we advise that the USAID officials take certain steps to avoid potential conflict of interest problems.

This memorandum provides initial guidance regarding solicitation campaigns from a legal perspective, but ideally ADS guidance would be developed to reflect both legal requirements and USAID policy considerations.

EXCLUSIONS: This memorandum does not apply to donor coordination¹¹ or requests for cost share or matching fund contributions¹², and in general does not apply to instances where USAID does not initiate the fundraising activity.

USAID employees would not need to follow the procedures outlined in this memorandum if they are coordinating assistance or contributions of goods and services with other donors, both governmental and private. For example, a health officer in the field could coordinate with other donors for the provision of commodities to a health clinic without following the procedures outlined herein.

In general, this memorandum does not apply to instances where a USAID employee is contacted by a potential donor about contributing to a USAID program or asks for USAID's guidance on how to spend its funds in a particular country or region. Rather, this memorandum addresses situations in which a USAID official plans to contact potential donors in a solicitation campaign. There may be instances where it is difficult to ascertain whether USAID or another donor initiated the fundraising efforts. Questions regarding the applicability of this memorandum to a particular situation should be directed to GC.

DISCUSSION: As a general rule, specific authority is needed for government officials to solicit funds. This is reflected in the government-wide Standards of Conduct for Employees of the Executive Branch that permit fundraising in an official capacity if, in accordance with statute, Executive Order, regulation or otherwise as determined by the agency, the employee is authorized to engage in fundraising as part of his or her official duties.¹³ For government officials to solicit contributions for a particular project or activity, the agency must determine whether it has the authority to do so and whether such fundraising activities are appropriate. Once these points are confirmed and it is clear that the

¹¹ See Donor Coordination Strategies, <http://www.usaid.gov/pubs/ads/200/200sad.doc>.

¹² See ADS 303.5.10, E303.5.10, 303.5.10a and E303.5.10a and PVO Cost Sharing Policy, <http://www.usaid.gov/pubs/ads/200/updates/iu2-3.pdf>.

¹³ 5 C.F.R. 2635.808 (b).

Tools for Alliance Builders

fundraising is part of the government employee's official duties, we recommend that such activities be formally approved by the Agency pursuant to the procedures outlined below.

USAID has the authority to solicit contributions on its own behalf under its gift authorities, Section 635(d) of the Foreign Assistance Act of 1961, as amended ("FAA"), and Section 25 of the Department of State Basic Authorities Act of 1956, as amended, 22 U.S.C. Section 2697.¹⁴ In addition, USAID officials have the authority to engage in fundraising for USAID or others under certain provisions of the FAA which establish U.S. policy to encourage the participation of the private sector in the development process.¹⁵

There are a number of conditions on such fundraising. They include: (a) the agency may not solicit contributions for the travel expenses of Government employees; (b) a solicitation must be for funds to be used in connection with the agency's authority (e.g., funds solicited under the FAA must be used for agency programs or the foreign assistance programs of other organizations); (c) a solicitation must be structured to avoid any appearance that a contributor will receive preferential treatment in its dealings with USAID (or would face any kind of discriminatory treatment if it declines to contribute); and (d) the solicitation must not include covert or deceptive activities (emphasis added)¹⁶.

In order to meet these conditions, especially (c), we recommend that USAID officials take certain steps to avoid potential conflict of interest problems. The State Department procedures described in Attachment A provide a basis for such steps. However, the State Department procedures have been modified because USAID, unlike State, has business relationships with a large number of entities through USAID's acquisition and assistance programs and because the Agency actively seeks to promote private sector involvement in development through the Global Development Alliance.

General Guidance and Suggested Actions for USAID Officials Undertaking Solicitation Campaigns

(i) Potential donors

Participation should be as inclusive as possible and offered to a large number of entities in a given category to avoid showing preference to one or more firms. Any solicitation should note the effort to gather support from a broad number of firms, institutions, or persons.

(ii) Types of donors

Foundations – As a general matter, foundations are part of the donor community. Therefore, solicitations of foundations are not problematic from a conflicts perspective because of the nature of their work and the fact that a typical foundation is not seeking any business, benefit, or assistance from the USG. In many cases we are already working with certain foundations as partners on development projects.

However, certain foundations may be related to companies or other entities, and that relationship may pose conflicts issues. For those foundations, a review should be made to ascertain how the foundations are structured and how decisions to fund certain projects are made in order to assess possible conflicts.

Fortune 500 Companies – To the extent that USAID does business with these companies, more than likely it accounts for only a small percentage of their income. For that reason, from a conflicts perspective, solicitations of these companies are not generally problematic if

¹⁴ See ADS 628.5.1 and E628.5.1.

¹⁵ See FAA Sections 102(a), 102(b)(8) and (9), and 601(a); and GC Opinions: FAA Section 635, No. 78 (GC/LP, Miller, April 7, 1997) and GG/Archives (GC/EPA, Miller, October 9, 1991).

¹⁶ GG/Archives (GC/EPA, Miller, October 9, 1991).

Tools for Alliance Builders

a basic conflicts analysis is completed prior to the solicitation and the solicitation is made to a wide number of companies. Companies in a particular sector may require additional analysis because of the direct connection between the activity for which funds are being raised, USAID's activities in a particular area, and these companies. For example, if USAID were soliciting contributions for an HIV/AIDS activity, pharmaceutical companies would require additional conflicts analysis due to their direct connection with USAID's HIV/AIDS activities.

Other USAID Contractors and Grantees – If solicitations are made to this group, a significant conflicts analysis must take place to insure that there is no appearance that the gift is offered with the expectation of obtaining advantage or preference in dealing with USAID, especially for firms and non-profits who receive substantial USAID funding (i.e., when USAID is a major customer or donor).

(iii) The Soliciting Official

In addition to avoiding organizational conflicts at the Agency level, care should be taken, when conducting solicitation campaigns, to avoid creating conflicts for individual employees between their solicitation activities and other official duties. To avoid an appearance of conflict, USAID officials engaged in fund-raising campaigns should not solicit contributions from persons or organizations that have financial interests that may be substantially affected by the performance or non-performance of the soliciting official's other duties. An employee's other duties should be taken into account as part of a decision to assign the individual to a fund-raising campaign. Any potential conflicts should be noted in the action memorandum along with measures taken to eliminate or mitigate them.

Similar conflict issues can also arise in situations where the Agency engages a contractor to conduct a solicitation campaign. Agency officials engaging a contractor to handle a fund-raising campaign should consider the potential for conflicting roles that may create appearance problems and take steps to mitigate such conflict. It is recommended that such contract include the standard AIDAR Clause 752.209-71.

(iv) Approval of the solicitation

For all solicitations, we advise that an action memorandum be prepared to document the decision to solicit funds from certain entities. The action memorandum should include information on the following: (1) amount of money to be raised; (2) who will receive the money (USAID or another entity); (3) potential donors; (4) methods of raising money (e.g., mail, telephone calls); (5) who will do the soliciting; (6) availability of alternative funding sources; (7) the importance to the USG of the proposed project; and (8) the planned text of the fundraising "pitch," if available (the "fundraising script"). At either the time of approval of the action memorandum or initiation of the campaign, the text of the fundraising script should be finalized with LPA and GC approval.

It is an Agency policy decision to identify the level at which approval of such action memoranda should be made. Given the potential risks involved, we would advise that it be done at the AA level. In addition, given the public affairs aspect of a solicitation campaign and the potential conflicts issues, we also would advise that the memorandum be cleared at appropriate levels by LPA and GC. In addition, we would advise that when clearing or approving the action memorandum, each Agency official should employ a test balancing the policy interests in favor of fundraising against the potential risks to the Agency.

(v) Maximum amount of donation from a single donor

The State Department does not usually accept more than \$200,000 from a single donor for a specific campaign. In some circumstances, it may be appropriate to consider a maximum

Tools for Alliance Builders

contribution that will be sought from a single donor. Because of the policy interests involved in furthering the Global Development Alliance, however, we do not propose a maximum contribution limit.

(vi) Implementation and Oversight

Once a solicitation campaign has been approved, the implementing office must ensure that the solicitation campaign is implemented in accordance with the action memorandum. The implementing office also should continue to consult with LPA and GC on public affairs and legal issues, including reviewing any conditions to donations (discussed below), and determining the appropriateness of the institution to receive funds and the type of financial instruments that will be used.

(vii) Conditions on donations

Donors may seek to impose conditions on their donations, and USAID can accept conditional gifts. However, it is difficult to anticipate these conditions when beginning a solicitation. It is up to the official with authority to accept the gift to determine whether the conditions can be agreed to given the type of conditions, administrative burden, donor, size of donation, and other considerations.¹⁷

The accepting official should document the decision as to whether USAID accepts the conditions and inform the donor. There also will be responsibility to implement procedures to ensure the conditions are respected. Conditions regarding memberships on boards of directors of private entities raise special considerations and should be reviewed with extreme care.

(viii) Receipt of Donations

Donations for USAID must be received by USAID for deposit in the USAID donation trust account. Such funds are subject to apportionment in the budget process. USAID cannot contract for an agent to receive funds on USAID's behalf.

(ix) Solicitations for entities other than USAID

For solicitations of donations to entities other than USAID or alliances of entities, the action memorandum described above in "Approval of the solicitation" should include additional information to assist the clearance/approving officials in determining whether it is appropriate for USAID officials to solicit donations on behalf of such entity. For example, we recommend that detailed information be included about the entity, along with an explanation of why it is appropriate for USAID to seek contributions on the entity's behalf, or on behalf of an alliance. USAID may need to develop disclaimers when soliciting contributions on behalf of other entities so that contributors do not view USAID as guaranteeing proper operation of the recipient entity.

¹⁷ See ADS 628.5.1.